

FILED

JAN 05 2011

BEFORE THE DISCIPLINARY COMMISSION OF THE  
OF THE SUPREME COURT OF ARIZONA

IN THE MATTER OF A MEMBER  
OF THE STATE BAR OF ARIZONA

DAVID P. DE COSTA,  
Bar No. 020139

RESPONDENT.

No. 09-1658

DISCIPLINARY COMMISSION  
REPORT

This matter first came before the Disciplinary Commission of the Supreme Court of Arizona on September 11, 2010, pursuant to Rule 58, Ariz.R.Sup.Ct., recommending acceptance of the Tender of Admissions and Agreement for Discipline by Consent ("Tender") and Joint Memorandum ("Joint Memorandum") providing for a six month suspension, one year of probation with the State Bar's Law Office Management Assistance Program ("LOMAP"), fee arbitration if requested by the client, and payment of costs within 30 days of the date of the final judgment and order. The Commission unanimously rejected the Tender and remanded the matter having concluded that the recommended sanction was insufficient.

The matter again came before the Commission on December 11, 2010 for consideration of the Second Hearing Officer's Report recommending acceptance of the Second Tender providing for a six month and one day suspension. No hearing was held on the Second Tender.

**Decision**

1           Upon consideration, the eight members<sup>1</sup> of the Disciplinary Commission  
2           unanimously reject the Tender and the Hearing Officer's recommendation that it be  
3           accepted and remand the matter to the Hearing Officer for further proceedings.<sup>2</sup>

4  
5           In the view of the Commission, the allegations in the Complaint strike at the very  
6           heart of the truth-seeking function of the criminal justice system. The Complaint alleges  
7           that Respondent conspired with his client to have the client fail to appear for trial. Failure  
8           to appear for trial is a Class 5 felony. A.R.S. § 13-2507(B). Respondent's conduct in  
9           conspiring with his client to commit a felony is also a Class 5 felony. A.R.S. § 13-1003-  
10          (D). When his client failed to appear, Respondent then, repeatedly, lied to the judge.  
11          Respondent feigned ignorance as to why his client did not appear when he had, in fact,  
12          advised the client not to appear. The legal system cannot function if attorneys are  
13          permitted to lie to a court. Nor is an attorney permitted to defend his client based on a  
14          defense that has no basis in fact. Here it is alleged that Respondent knowingly and  
15          intentionally did both. As proposed, the sanction is insufficient to impress the Bar and the  
16          public with the seriousness of this conduct.

17  
18                               RESPECTFULLY SUBMITTED this 5 day of January, 2011.

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21                               *Pamela M. Katzenberg*  
22                               Pamela M. Katzenberg, Chair  
23                               Disciplinary Commission

24  
25           Original filed with the Disciplinary Clerk  
26           this 5th day of January, 2011.

<sup>1</sup> Commissioner Belleau did not participate in these proceedings.

<sup>2</sup> Pursuant to Administrative Order 2010-83, this matter is transferred to the Office of the Presiding Judge for further proceedings.

Copy of the foregoing mailed  
this 7 day of January, 2011, to:

David De Costa  
Respondent  
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Stephen P. Little  
Bar Counsel  
State Bar of Arizona  
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Copy of the foregoing hand delivered  
this 7 day of January, 2011, to:

Hon. Louis A. Araneta  
Hearing Officer 6U  
1501 W. Washington Street, Suite 104  
Phoenix, AZ 85007

by: Deann Baker

/mps